

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
MARYLAND**

<b>MICHELLE BUTLER</b>	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No.: WDQ-05-654
	:	
<b>FIRST TRANSIT, INC.</b>	:	
	:	
Defendant,	:	
	:	
and	:	
	:	
<b>GATHEL WARE</b>	:	
	:	
Defendant.	:	

**MEMORANDUM IN OPPOSITION TO SUMMARY JUDGMENT**

**I. Preliminary Statement**

In this negligence case brought by a bus passenger Michelle Butler, the Defendants First Transit, Inc (the bus transit company) and Gathel Ware (the bus operator) have filed a motion for summary judgment, contending that the sole proof of negligence is plaintiff’s characterization of a sudden bus stop. Defendants cite several Maryland cases holding that a bus passenger’s characterization of the bus sudden start or stop—without more evidence—is insufficient to prove negligence. In making this argument, Defendants conveniently ignore the deposition testimony of the bus operator, Gathel Ware, in which he testified that a mechanical problem with the brakes on the bus caused the bus on which the plaintiff was riding to stop suddenly. As we demonstrate herein, the driver’s testimony here takes this case well outside of the scope of the “sudden start and stop” Maryland bus accident cases cited by the defense where this was no evidence of foreseeable mechanical difficulty which

would cause a bus' breaking mechanism to suddenly "lock-up" or freeze. Ware's testimony concerning the mechanical difficulties he encountered when the plaintiff was his passenger renders the cases cited by the defense inapposite and creates genuine issues of material fact which preclude summary judgment.

## **II. Factual Background**

Alighting a First Transit Bus in Montgomery County, Maryland on May 26, 2002 around 3:30 p.m., Michelle Butler paid her fare and made her way to a vacant seat carrying a tote bag containing medical equipment, having just completed a nursing assignment for a private patient receiving in-home nursing care. Her one thigh came down on the vacant seat when the bus came to a sudden, screeching halt, causing her to twist her left knee and pinky finger as the sudden stop threw her against another passenger. Deposition of Michelle Butler, pages 51, 55, appended hereto as **Exhibit A**.

Gathel Ware, the bus operator, testified that as Ms. Butler boarded the bus at the Bradley bus stop, he opened the bus doors for Ms. Butler to alight on the bus, the "break engaged itself" as if it were in "park". He called "dispatch" and requested a "switch-out" because he did not know what had happened. Mr. Ware explained that a "switch-out" is when another or substituted bus is brought in because "something is wrong". His supervisor told him to keep going, which he did, even though he was "puzzled by what happened" and was "really scared to go at any speed". Shortly after Ms. Butler alighted the bus, the brakes suddenly "seized up" again, while the bus was traveling about 10 miles per hour. Between the time Ms Butler boarded the bus and the sudden stop, Mr. Ware testified:

“I had my flashers on. Being that I was puzzled by what happened, I was really scared to go at any speed. Because it just like if you ever experienced a wheel coming off, you know or something that you can, you know, describe, you know, you can’t count them in your mind what had happened. I went over in my mind, I didn’t even think that this could happen.”

Deposition of Gathel Ware, pages 34-39; direct quotation from page 39, appended hereto as **Exhibit B**.

Mr. Ware testified that after the brakes seized, he asked anyone if they needed an ambulance, and Ms. Butler responded affirmatively. Ware Deposition at pp. 43-44, **Exhibit C**. After this incident, another bus arrived to transport the remaining passengers to their destination, and the bus on which Plaintiff was riding was taken out of service. Ware Deposition, at pp. 45-46, 56, **Exhibit D**. The designated representative at the First Transit corporate deposition Larry Price, testified that Ware was subsequently terminated as a bus driver for too many preventable accidents. Corporate Deposition of First Transit at pp. 23-25, **Exhibit E**. He further testified there was evidence that second passenger also was injured as a result of this same incident. *Ibid.* at p. 30, **Exhibit F**.

### **III. Standards for the Consideration of Summary Judgment Motions**

Pursuant to Federal Rule of Civil Procedure 56(c), summary judgment is proper only where the moving party demonstrates that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The function of the trial court at the summary judgment stage is *not* to weigh the evidence and determine the truth of the matter, ““but to determine whether there is a genuine issue for trial.”” *Russell v. Microdyne Corp.*, 65 F.3d 1229, 1239 (4<sup>th</sup> Cir. 1995), *quoting Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). The evidence presented and all reasonable inferences are to

be considered in the light most favorable to the party opposing the motion. *Id.*, citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 -88 (1986). And, as in the instant case, where the party opposing summary judgment has the burden of proof at trial, she is entitled ““to have the credibility of his evidence as forecast assumed, his version of all that is in dispute accepted, all internal conflicts in it resolved favorably to him, the most favorable of possible alternative inferences from it drawn in his behalf; and finally, to be given the benefit of all favorable legal theories invoked by the evidence so considered.” *Overstreet v. Kentucky Cent. Life Ins. Co.*, 950 F.2d 931, 937 (4<sup>th</sup> Cir. 1991) (citations omitted).

### **III. Legal Argument**

While acknowledging that common carriers like First Transit are held to the “highest degree” of care to prevent injuries to bus passengers, Defendants point out that a bus passenger’s description of the suddenness of the bus movement—without more evidence—will not sustain a prima facie case of negligence. *Commissioner of Motor Vehicles v. Baltimore & Annapolis Railroad Co.*, 257 Md.529, 263 A.2d 592 (1970); *Sunthimer v. Baltimore Transit Co.* , 217 Md. 52, 53, 141 A.2d 527 (1958); *Retkowsky v. Baltimore Transit Co.*, 222 Md. 433, 160 A.2nd 791 (1960); *Smith v. the Baltimore Tansit Company*, 211 Md. 529, 540 , 128 A.2d 413, 419 (1957)( adjective descriptions of the nature of a sudden start or stop of a bus or trolley are insufficient to establish negligence in the operation of the bus in *the absence of “some definite , factual incident thereof which makes it so abnormal and extraordinary that it can be found to have constituted negligence in operation) .(emphasis supplied)*

All of these cases are inapposite to the facts of this case. Here, the bus operator has acknowledged that he encountered what constitutes an “abnormal and extraordinary” problem with the bus he was operating---a problem, he testified, which was, “puzzling” since it was unlike any other in his experience. As the plaintiff boarded the bus, the brakes froze as if in the parking gear, which it was not in at the time. Bus operator Ware was so concerned he called the dispatcher not only to report the problem, but to request a “switch out” i.e. a substitute bus. His superiors preemptively denied his request and instructed him to keep going. However, he was worried and drove slowly with his flashers on, only to have the same problem re-occur again---just as he feared. This is not a case---like the ones cited by the defense--- where the bus operator apparently stops a bus suddenly due to traffic conditions or movements of other vehicles. This is a case where an unusual, but in these circumstances, foreseeable, mechanical problem with the bus’ brakes jammed and thus caused it to stop suddenly. Given the “highest degree of care” Maryland law requires of common carriers who operate in this State, it was negligent for First Transit not to take the bus out of service when its own operator alerted it of a serious mechanical problem by its operator. It was negligent for Ware to continue to operate the bus under these circumstances, knowing what he knew about the brakes tendency to “freeze up” and fearing that what happened to his bus at the Bradley stop where the plaintiff would happen again, as it did shortly thereafter. Thus, factually, this case is not within the purview of any of the cases cited by the defense. Indeed, as the *Smith* case, *supra* recognized, this is a case of a “factual incident...which (is) so abnormal and extraordinary that it can be found to constitute negligence in operation.” *Supra*, 128 A.2d at 419.

Accordingly, since Ware's testimony creates facts from which a jury can find negligence under the applicable Maryland law, and thus there are genuine issues of material fact, Plaintiff respectfully requests that Defendants' motion be denied.

Respectfully submitted,

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Lawrence S. Lapidus, #02922  
**KARP, FROSH, LAPIDUS, WIGODSKY  
& NORWIND, P.A.**  
1133 Connecticut Avenue, N.W., Suite 250  
Washington, D.C. 20036  
(202) 822-3777

Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a copy of the foregoing Plaintiffs' Opposition to Defendant's Motion for Summary Judgment was electronically filed with courtesy copies mailed, first-class postage prepaid, this \_\_\_\_\_ day of March, 2006 to:

Marissa Trassati, Esq.  
250 West Pratt Street  
Baltimore, Maryland 21201

\_\_\_\_\_  
Lawrence S. Lapidus



cc: Lawrence S. Lapidus, Esq.  
1133 Connecticut Avenue, NW  
Suite 250  
Washington, D.C. 20036

Jeremy Flachs, Esq.  
7006 Little River Turnpike  
Suite G  
Annandale, Va 22003

Marissa Trassati, Esq.  
250 West Pratt Street  
Baltimore, Maryland 21201